

18.. A building structure as claimed in 17 wherein the unitary metal body is formed from a 14 to 16 gauge steel sheet.

b3  
cont  
19. A building structure as claimed in claim 18 wherein the anchoring plate is generally U-shaped with for two anchoring structures located at the top of bottom of the anchoring plate, each of the anchoring structures having a centrally located opening through which the concrete passes.

20. A building structure as claimed in claim 19 wherein the each of the openings have steel reinforcing bars passing therethrough.--

---

REMARKS

Claims 1 to 20 now stand in the application. Reconsideration and reexamination on the basis of the claims as amended and the following remarks is respectfully requested.

Claims 1 and 8 have been amended to replace the term "dimensioned" with the phrase "having a size and thickness". This amendment is supported in the disclosure on pages 6 and 9 which describe the size and thickness of the bracket.

New claims 17 to 20 have been inserted into the application directed to the building structure utilizing the bracket of the present invention. These claims are supported in the disclosure on pages 7 to 10 and the figures which describe and illustrate such a building structure.

Claims 1 to 5 have been rejected under 35 USC 102(b) as being anticipated by Bourassa et al. Applicant respectfully traverses the rejection.

Bourassa et al describe a stud bracket used for mounting an electrical wiring box to a metal stud. As set forth in column 1, lines 36 and 37 and in column 2, lines 65 and 66, the bracket of Bourassa is made of a hand deformable material to allow the bracket to be bent by hand so that it may be easily attached to a metal stud. This is shown in Figures 2 through 7 and described in Column 3, beginning in line 25 of Bourassa.

In contrast, the bracket of the present invention is used for attaching header and rim joists to concrete walls produced utilizing insulated forms. As such, the bracket must be dimensioned to properly support the loads encountered in floor systems constructed utilizing the bracket of the present invention. As set forth on page 6, line 11 to 13, of the present application, the bracket is formed of a suitable strength metal preferably a 12 or 16 gauge steel sheet material. While it is the Applicant's position that the bracket of claim 1 of the present application inherently had to have the capability of supporting the load of the header or rim joists, Applicant has amended claim 1 to recite that the bracket is a unitary metal body dimensioned to support the load of a header or rim joist. A similar amendment has been made in claim 8.

It is applicant's submission that one of skill in the art would not be led to modify the teaching of Bourassa to arrive at the bracket of the present invention. Bourassa clearly teaches that the bracket for attachment of electrical boxes must be hand deformable. To produce a bracket not having this property would be clearly going against the teaching of Bourassa. In view of all the above, it is respectfully submitted that claims 1 to 5 are not anticipated by Bourassa.

Claim 6 had been rejected under 35 USC 103(a) as being unpatentable over Bourassa et al. For the reasons set forth above with respect to claims 1 to 5, it is respectfully submitted that as Bourassa teaches that the bracket must be light enough to be hand deformable, it would not have been obvious to modify Bourassa to provide a bracket dimensioned to support the load of a header or rim joist in a building structure.

Claim 7 and 15 had been rejected under 35 USC 103(a) as being unpatentable over Bourassa et al in view of "Simpson Strong-Tie Connectors" catalog item, page 48, hanger LSU26. As set out above, Bourassa teaches a lightweight hand deformable bracket for attaching electrical boxes to metal studs. The Simpson Strong-Tie catalog, LSU26, is a joist hanger bracket used for attaching sloped or skewed joists to headers. One of skill in the art would not be led to combine the teaching of Bourassa and Simpson in the manner suggested by the Examiner as to do so would go against the teaching of Bourassa that the bracket must be hand deformable. Even if one were to combine the teaching, which is not admitted but denied, one would not be led to

develop the bracket of the present invention as there is no teaching in the combination which would lead one of skill in the art to such a bracket. Accordingly, it is respectfully submitted that Claims 7 and 15 are not obvious in view of Bourassa et al and Simpson Strong-Tie Connector.

Claims 8 to 13 have been rejected under 35 USC 103(a) as being unpatentable over Tobin et al in view of Bourassa et al. Tobin et al describes a form tie for holding the foam panels of insulated concrete forms in the proper spaced apart relationship. The form tie of Tobin is similar in structure to the bridging members 18 illustrated in Figure 1 of the present application. As described in Tobin in column 2, beginning in line 57, the form ties are made of an extruded plastic material such as polypropylene, nylon or polyethelene. As such, the ties would not have the load carrying capacity to allow them to support the load of a header or rim joist. One of skill in the art would not combine the teachings of Bourassa et al and Tobin et al as the patents are directed to totally different applications, one being the attachment of electrical boxes to metal studs and the other being a tie for holding insulated forms for constructing concrete walls. Even if one were to combine the teaching, which is not admitted but denied, one would not be led to develop the bracket of the present invention as there is no teaching in the combination which would lead one of skill in the art to such a bracket. Accordingly, it is respectfully submitted that Claims 8 to 13 are not obvious in view of Bourassa et al and Tobin et al.

Claims 14 and 16 had been rejected under 35 USC 103(a) as being unpatentable over Tobin et al in view of Bourassa et al and Simpson Strong-Tie Connector. For the reasons set forth above, it is respectfully submitted that one of skill in the art would not combine the teachings of the three cited references in the manner suggested by the Examiner. The three references are all directed to different aspects of construction, Bourassa being directed to the bracket for attaching electrical boxes to metal studs, Tobin et al being directed to a tie for tying together insulated forms for concrete walls and Simpson Strong-Tie being directed to a sloped joist hanger for attaching a joist to a header or rim joist. Accordingly, it is respectfully submitted that Claims 14 and 16 are not obvious in view of Bourassa et al, Tobin et al and Simpson Strong-Tie Connector.

With respect, the Examiner is applying the references in hindsight using the teaching of the present application as a guide. Such an approach has been determined by the Courts to be the incorrect application of the determination of obviousness.

Obviousness is determined by "what the combined teachings of the references would have suggested to those of ordinary skill in the art". *In re Keller*, 208 USPQ 871, 881. Obviousness "cannot be established by combining the teaching of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination" and "teachings of references can be combined only if there is some suggestion or incentive to do so." *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 221 USPQ 929, 933.

"To imbue one of ordinary skill in the art with the knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." *W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312 (Fed. Cir. 1983)

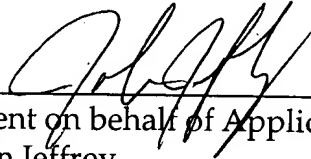
"In order to establish obviousness, it is necessary for the examiner to present *evidence*, preferably in the form of some teaching, suggestion, incentive or inference in the applied prior art, or in the form of generally available knowledge, that one having ordinary skill in the art *would have been led* to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention." *Ex parte Levengood*, 28 USPQ2d 1300, 1301.

Accordingly, in view of all of the above, it is respectfully submitted the the claims of the application define a patentable invention over the prior art of record.

CONCLUSION

In view of all the foregoing, it is respectfully submitted that the Application is allowable and early allowance is hereby requested.

Respectfully submitted,

  
\_\_\_\_\_  
Agent on behalf of Applicant  
John Jeffrey  
Registration No. 35,764  
(416) 368-8313

JJ/ab